SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

October Term, 1965

No. 246

MICHAEL VETERE,

Petitioner,

v.

JAMES E. ALLEN, JR., Commissioner of Education of the State of New York; BOARD OF EDUCATION OF UNION FREE SCHOOL DISTRICT NO. 12 OF THE TOWN OF HEMPSTEAD, NEW YORK; PATRICIA ANN MITCHELL, ET AL.; and THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,

Respondents.

LEWIS HUMMEL and HERMAN ABRAMS,

Petitioners,

v.

JAMES E. ALLEN, JR., Commissioner of Education of the State of New York, and BOARD OF EDUCATION OF UNION FREE SCHOOL DISTRICT NO. 12 OF THE TOWN OF HEMPSTEAD, NEW YORK,

Respondents.

BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

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INDEX

	PAGE
Question Presented	1
Relevant Statutes	2
Statement of the Case	3
REASON FOR THE DENIAL OF THE WRIT:	
I. The decision below is firmly supportable on independent grounds of state law; therefore, it is not subject to review by this Court	4
CONCLUSION	8
APPENDICES:	
§ 207 of the New York Education Law	A-1
§ 301 of the New York Education Law	A-1
§ 305 of the New York Education Law	A-2
§ 308 of the New York Education Law	A-7
§ 309 of the New York Education Law	A-7
§ 310 of the New York Education Law	A-8
§ 311 of the New York Education Law	A-9
Statement of Policy on De Facto Segregated Public Schools of the Board of Regents, The University of the State of New York, adopted January 28, 1960	A-10
Statement of The University of the State of New York, The State Education Department, Office of the President of the University and Commissioner of Education, Albany, dated June 14, 1963	A-12

Table of Cases Cited

	PAGE
Black v. Cutler Laboratories, 351 U. S. 292 (1956)	5, 7
Board of Education of the City of New York v. Allen, 6 N. Y. 2d 127 (1959), 160 N. E. 2d 60	7
Board of Education v. Graves, 243 N. Y. 204, 153 N. E. 49 (1926)	7
Bullock v. Cooley, 225 N. Y. 566, 576-7, 122 N. E. 630, 633 (1919)	7
Craig v. Board of Education of the City of New York, 173 Misc. 969, 19 N. Y. S. 2d 293 (S. Ct. 1940), aff'd 262 A. D. 706, 27 N. Y. S. 2d 993 (1941)	7
Easton v. Calendar, 11 Wend. 90 (1833)	7
Fox Film Corp. v. Muller, 296 U. S. 207 (1935)	4, 5
Herb v. Pitcairn, 324 U. S. 177, 125 (1945)	4
Jankovich, et al. v. Indiana Toll Road Commission, 379 U. S. 487 decided (1965)	5

Statutes Cited

§ 207 of the New York Education Law	2, 6
§ 301 of the New York Education Law	2, 6
§ 305 of the New York Education Law	2, 6
§ 308 of the New York Education Law	2, 6
§ 309 of the New York Education Law	2, 6
§ 310 of the New York Education Law	2, 6
§ 311 of the New York Education Law	2, 6

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BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

Question Presented

Has the Commissioner of Education of the State of New York the authority to require a board of education to eliminate racial imbalance?

Relevant Statutes

Sections 207, 301, 305, 308, 309, 310 and 311 of the New York Education Law, McKinney's Consolidated Laws of New York, pages 68-69, 142-143, 144-148, 166-167, 193 are the statutes pertinent to this case and are set out in the Appendix at pages A-1 to A-9, *infra*.

Statement of the Case

This litigation was precipitated in 1962 by an appeal by the respondents Patricia Ann Mitchell and other Negro pupils to the Commissioner of Education pursuant to § 310 of the New York Education Law, seeking the reduction of racial imbalance [1] in Union Free School District No. 12. As a result of that appeal in November 1962, and subsequent to a hearing of the parties involved, the Commissioner directed the Advisory Committee on Human Relations and Community Tensions to conduct a study of educational conditions prevailing in School District No. 12, and to report its findings and recommendations (R. 63-64).

The Committee had been appointed by the Commissioner on June of 1962 to advise and assist the State Education Department and local school districts in finding solutions to the problem of imbalance and had succeeded in developing guide lines (A-14).

That Committee, while observing that the Board of Education supplied approximately equal physical facilities and

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[1] In January 1960, the Board of Regents, the highest educational authority in the State of New York, declared the elimination of racial imbalance to be an integral part of its educational policy and a step essential to the effectuation of equal educational opportunity for all children (A-10 though A-12). The State Education Department, of which the Commissioner of Education is the chief officer, was charged specifically with implementation of the policy (A-11). The Regents urged both governmental agencies and the citizenry in general to take those concrete measures which would facilitate the attainment of its announced goal.

set common educational standards for each of its three elementary schools, found that racial imbalance did in fact exist in the Woodfield Road School (R. 97). Both the Lindner Place and Davidson Avenue Schools had 86% white student populations, while the Woodfield School, located in a predominantly Negro area, was 75% Negro and was generally viewed as the Negro school (R. 97). The Committee determined that the educational defect inherent in such a racially inmbalanced school could be cured only by altering the racial composition of its student body (R. 97). To that effect the Committee offered four alternative plans including Proposal I, commonly referred to as the Princeton Plan, under which pupils are assigned to schools on the basis of grade rather than residence (R. 101-103).

After reviewing the arguments of the parties and the report of the Committee, the Commissioner issued the order of June 17, 1963, which is under attack in these proceedings (R. 101-116). The order directed the Board to institute Proposal I in the 1963-64 school year, by centralizing all classes from grades K-3 in the Lindner and Davidson Schools and those from grades 4-5 in the Woodfield Road School (R. 101-102).

On July 16, 1963, the Board of Education applied to reopen the appeal and to stay the decision. This motion to reopen was refused on August 13 (R. 116-121). The Board, later in that month, proposed an alternative plan, which is not at issue in these proceedings (R. 79-80, 24-29). This plan was rejected by the Commissioner on September 5, 1963, as not in compliance with his order (R. 121-123).

On August 23, 1963, at a Special Term of the Supreme Court of the County of Albany, petitioners, parents of white children, commenced the present suit to annul the Commissioner's order. Respondents[2] as parties in the related

[2] In so far as the National Association for the Advancement of Colored People is included as a respondent, this case is entitled incorrectly. The National Association for the Advancement of Colored People is not and has never been a party to these proceedings.

proceedings before the Commissioner, were made parties to this proceeding by an order pursuant to §§ 1001, 1002 and 1003 of the New York Civil Practice Laws and Rules (R. 9-10).

Special Term determined that § 3201 was violated and did not reach the constitutional issue (R. 38-49). In July, 1964, the Appellate Division reversed the order and judgment of Special Term (R. 12-29).

On April 9, 1965, the Court of Appeals affirmed the judgment and order of the Appellate Division, holding that the New York Commissioner of Education had quasi-judicial authority to consider all matters pertaining to the general school system of the state and that he had acted within the scope of such authority, and further that his decision was not arbitrary. On June 1, 1965, petitioners filed a petition for a writ of certiorari with this Court, to which this brief responds.

REASON FOR THE DENIAL OF THE WRIT

I

The decision below is firmly supportable on independent grounds of state law and, therefore, is not subject to review by this Court.

In 1945, this Court reaffirmed a long-standing constitutional policy by declaring:

> This Court from the time of its foundation has adhered to the principle that it will not review judgments of state courts that rest on adequate and independent state grounds. *Herb* v. *Pitcairn*, 324 U. S. 117, 125 (1945), [and cases cited therein].

This proposition holds true even though the state court has actually ruled on a federal question where its decision is dictated essentially by state law. *Fox Film Corp.* v. *Muller*, 296 U. S. 207 (1935).

This historic policy stems from judicial reluctance to render advisory opinions by interjecting constitutional issues into controversies, which state tribunals have resolved primarily in terms of state law. Whether the non-federal ground on which the state court relied is right or wrong is not of concern to the Court. "It is enough that it is, at least, not without fair support." *Fox Film Corp.* v. *Muller, supra,* at page 209.

The decision of the New York Court of Appeals was based squarely on independent and adequate grounds of state law and policy, thus defeating the claim that there exists any important federal question and, in consequence, the *certiorari* jurisdiction of this Court. Recent authority for this reasoning is found in *Jankovich, et al.* v. *Indiana Toll Road Commission,* 379 U. S. 487, 490-91 (1965), where the Court stated in denying a writ of certiorari, that:

> . . . The [Indiana] court discussed an Indiana statute . . . and a prior interpretation of state law . . . But nothing in the court's opinion suggests that its conclusion . . . flows from a federal rather than a state source. Indeed, the organization and language of the opinion indicates that, at the least, the state law is an equal ground of decision.

In accord *Black* v. *Cutler Laboratories,* 351 U. S. 292 (1956).

In *Jankovich,* there was some basis for petitioners' assertion of a federal question since the state court, in arriving at its decision, dealt with provisions of both the state and federal constitutions. In this case, however, the "organization and language of the opinion" leave no doubt that the New York court based its decision squarely and entirely on matters of state law.

The sole issue presented to the court below, and determined by it, was whether or not the Commissioner of Education was authorized under New York law to direct a Board of Education to eliminate racial imbalance in implementation of state educational policy. This question was resolved affirmatively by the court after a review of

the powers of both the Board of Regents and the Commissioner *vis a vis* local school boards under Sections 207, 301, 305(1) and 310 of the New York Education Law.

Section 207 of the Education Law reposes in the Board of Regents the express power both to formulate and to control the educational policy of the State of New York (A-1). Under Sections 301 and 305 (1), the Commissioner is explicitly made the chief administrative officer of the educational system and is bound to enforce "All laws relating to the educational system and to execute all polices of the Board of Regents" (A-1, A-2).[3]

The court below thoroughly examined the broad powers granted the Commissioner over appeals from decisions of local school authorities as in the present case, under Section 310 of the Education Law, the relevant portion of which provides that:

> Any person conceiving himself aggrieved may appeal or petition to the commissioner of education who is hereby authorized and required to examine and decide the same; and the commissioner of education may also institute such proceedings as are authorized under this article and his decision in such appeals, petitions or proceedings shall be final and conclusive, and not subject to question or review in any place or court whatever. Such appeal or petition may be made in consequence of any action:
>
> 7. By any other official act or decision of any officer, school authorities, or meetings concerning any other matter under this chapter, or any other act pertaining to common schools.

The court declared that *the very purpose* of the legislative grant of quasi-judicial powers to the Commissioner under §310 of the Education Law was to "make all mat-

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[3] Sections 308, 309 and 311 of the Education Law underscore the broad and practically all-inclusive power given the Commissioner over the actions of local school boards. These sections are set forth in the appendix at pages A-7, A-8, A-9.

ters pertaining to the general school system of the state within the authority and control of the Education Department and to remove the same as far as practicable and possible from controversies in the courts." *Bullock* v. *Cooley,* 225 N. Y. 566, 576-7, 122 N. E. 630, 633, (1919). This has been a principle of New York law for over 130 years. *Easton* v. *Calendar,* 11 Wend. 90 (1833).

The Commissioner brings to bear on the various issues brought before him on appeal not only those powers of a judicial character referred to above, but also all of the expert knowledge which must go into the execution of sound *educational* policy for the state.

This blend of powers gives the Commissioner broader power over local school officials than that which rests in the courts in that the Commissioner may substitute his own judgment for that of local school officials. *Craig v. Board of Education of the City of New York,* 173 Misc. 969, 19 N. Y. S. 2d 293 (*S. Ct. 1940*), aff'd 262 A. D. 706, 27 N. Y. S. 2d 993 (1941); *Board of Education* v. *Graves,* 243 N. Y. 204, 153 N. E. 49 (1926); *Board of Education of the City of New York* v. *Allen,* 6 N. Y. 2d 127, 160 N. E. 2d 60 (1959). Thus, a decision of the Commissioner under § 310 is considered final and conclusive, and only when purely arbitrary may the court intervene.[4]

Applying the law to the facts of this case, the Court of Appeals was impelled to conclude that the Commissioner was authorized to compel local boards to eliminate racial imbalance. The Board of Regents had not only promulgated its educational policy pursuant to Section 207, requiring the

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[4]. The scope of review which the state tribunals chose to accord the decision of an administrative body of officials, whether broad (as in *Black,* supra) or narrow (as here) is not a proper matter for the concern of this Court:

> "Of course, the scope of Review of such findings under the California Arbitration Act is a matter exclusively for the courts of that state and is not our concern. *Black, supra,* U. S. at 298, S. Ct. at 827, L. Ed. at 1196."

correction of imbalance as a means of removing impediments to learning and facilitating the attainment of goals of democratic education, but had specifically charged the Commissioner with the task of implementation (A-11) Under Section 301 and 305 (1), the Commissioner was bound to accept that charge. Clearly then, when respondents appealed under Section 310, from the failure of the Malverne-Lakeview Board of Education to correct racial imbalance, on finding that such imbalance existed, the Commissioner in exercising both his administrative and quasi-judicial powers was obligated to order its elimination. The Commissioner did indeed find that the Woodfield School, which had a 75% Negro student body and was generally characterized in the community as the Negro school, was imbalanced (R. 64-65).

Thus his decision requiring the Board to institute a plan designed to correct the racial imbalance in its school system was based not only on his own evaluation of the educational needs of one particular school district but was a necessary consequence of the general policy of the New York Board of Regents.

Hence the decision of the Court of Appeals upholding that determination of the Commissioner, governed, as it was, solely by state law, provides a compelling reason for this Court to deny the writ.

CONCLUSION

For this reason, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX

Section 207 of the New York Education Law

§ 207. Legislative Power

Subject and in conformity to the constitution and laws of the state, the regents shall exercise legislative functions concerning the educational system of the state determine its educational policies, and, except, as to the judicial functions of the commissioner of education, establish rules for carrying into effect the laws and policies of the state, relating to education, and the functions, powers, duties and trusts conferred or charged upon the university and the education department. But no enactment of the regents shall modify in any degree the freedom of the governing body of any seminary for the training of priests or clergymen to determine and regulate the entire course of religious, doctrinal or theological instruction to be given in such institution. No rule by which more than a majority vote shall be required for any specified action by the regents shall be amended, suspended or repealed by a smaller vote than that required for action thereunder. Rules or regulations, or amendments or repeals thereof, adopted or prescribed by the commissioner of education as provided by law shall not be effective unless and until approved by the regents, except where authority is conferred by the regents upon the commissioner of education to adopt, prescribe, amend or repeal such rules or regulations.

Section 301 of the New York Education Law

§ 301. Commissioner of Education Continued

The office of commissioner of education is hereby continued. Subject to the general direction and control of the regents of the university, he shall continue to have, exercise and perform the functions, powers and duties conferred or imposed by law upon the commissioner of education. He shall continue to exercise the judicial functions conferred

by law upon the commissioner of education and, subject to rules of the regents, to make, execute and issue in the name of the department such determinations, decisions, orders, notices and certificates as may be required for the exercise and performance of the functions, powers and duties conferred or imposed upon the department. With the approval of the board of regents, he shall continue to prepare the annual estimates and requests for appropriations for operation, maintenance and construction of the New York state school for the blind and shall review and incorporate into the departmental budget the state university program budget transmitted to him by the state university trustees. All moneys appropriated for the New York school for the blind, or derived from other sources in the course of the administration thereof, shall be expended upon vouchers approved by the commissioner of education, when and in the manner authorized by the board of regents. The regents may adopt rules conferring and imposing upon the commissioner of education such additional powers and duties as may be required for the effective administration of the department and of the state system of education. As amended L. 1950, c. 634, § 2, eff. Sept. 1, 1950.

Section 305 of the New York Education Law

§ 305. General Powers and Duties

The commissioner of education is hereby charged with the following powers and duties:

1. He is the chief executive officer of the state system of education and of the board of regents. He shall enforce all general and special laws relating to the educational system of the state and execute all educational policies determined upon by the board of regents.

2. He shall have general supervision over all schools and institutions which are subject to the provisions of this

chapter, or of any statute relating to education, and shall cause the same to be examined and inspected, and shall advise and guide the school officers of all districts and cities of the state in relation to their duties and the general management of the schools under their control.

3. He shall have general supervision of industrial schools, trade schools and schools of agriculture, mechanic arts and home making; he shall prescribe regulations governing the licensing of the teachers employed therein; and he is hereby authorized, empowered and directed to provide for the inspection of such schools, to take necessary action to make effectual the provisions therefor, and to advise and assist boards of education in the several cities and school districts in the establishment, organization and management of such schools.

4. He shall also have general supervision over the state teachers colleges and state colleges for teachers which have been, or which may hereafter be, established as required by the provisions of this chapter.

5. He shall be ex officio a trustee of Cornell university.

6. He shall be responsible for the safe keeping and proper use of the department and university seal and of the books, records and other property in charge of the regents, and for the proper administration and discipline of the various officers and divisions of the education department.

7. He may annul upon cause shown to his satisfaction any certificate of qualification granted to a teacher by any authority whatever or declare any diploma issued by a state teachers college and state colleges for teachers ineffective and null as a qualification to teach a common school within this state, and he may reconsider and reverse his action in any such matter.

8. He shall cause to be prepared and keep in his office records of all persons who have received, or shall receive, certificates of qualification to teach or diplomas of the state teachers colleges, and state colleges for teachers, with the dates thereof, and shall note thereon all annulments of such certificates and diplomas, and reversals thereof, with the dates and causes thereof, together with such other particulars as he may deem expedient.

9. The commissioner shall procure with the consent of the federal authorities complete lists giving the names, ages and destination within the state of all alien children of school age and such other facts as will tend to identify them, and shall deliver copies of such lists to the several boards of education and school boards in the respective localities within the state to which said children shall be destined, to aid in the enforcement of the provisions of this chapter relative to the compulsory attendance at school of children of school age.

10. He may administer oaths and take affidavits concerning any matter relating to the duties of his office or pertaining in any way to the schools of the state or any part thereof.

11. He is hereby authorized to furnish, by means of pictorial or graphic representations, additional facilities for instruction in geography, history, science and kindred subjects, to the schools, institutions and organizations under the supervision of the regents. Material collected for this purpose may, under regents general rules, be lent for a limited time to responsible institutions and organizations for the benefit of artisans, mechanics, and other citizens of the several communities of the state. He may from time to time enter into contracts necessary for carrying out this provision.

12. The commissioner of education is authorized and directed to establish and provide for the maintenance and conduct of courses of study or training in state teachers colleges and state colleges for teachers and in colleges and universities and other educational institutions and in connection with other educational agencies for the purpose of training teachers in principles and methods of instruction, and to give them knowledge to fit them to instruct foreign born and native adults and minors over sixteen years of age in evening, extension, factory, home and community classes. Such courses of study shall be prescribed by the commissioner of education and shall continue for a period of not less than one year. No teacher employed to instruct foreign born and native adults and minors over sixteen years of age shall be employed by the state or compensated in whole or in part by the state, unless he shall be compensated such course of study or training or shall have an equivalent thereof, to be determined under the regulations of the commissioner of education. A special certificate shall be issued to teachers who have completed such course of study or a course of instruction which is equivalent thereto, provided, however, that temporary permits may be issued by the commissioner of education to teachers who are qualified to give such instruction pending the completion of such a course of study or training.

13. The commissioner of education or the board of education or trustees of any city or school district may provide for the purpose of giving instruction to foreign-born and schools in connection with factories, places of employment, or in such other places as he or they may deem advisable, for the purpose of giving instruction to foreign-born and native adults and minors over the age of sixteen years. Such course of instruction or study shall include instruction in English, history, civics and other subjects tending to promote good citizenship and to increase vocational efficiency. Such course of instruction and study shall be

prescribed by the regents of the university of the state of New York, and shall be in conformity with rules to be adopted by them.

14. All contracts for the transportation of school children involving an annual expenditure in excess of fifteen hundred dollars shall be awarded to the lowest responsible bidder, which responsibility shall be determined by the board of education or the trustee of a district, with power hereby vested in the commissioner to reject any or all bids, if, in his opinion, the best interests of the district will be promoted thereby and, upon such rejection of all bids, the commissioner shall order the district to seek, obtain and consider new proposals. All proposals for such transportation shall be in such form as the commissioner may prescribe. The board of education or the trustee of a district, as the case may be, shall request proposals for such transportation by advertisement published at least once in each week for two successive weeks in a newspaper published in the county in which such district is located and which has a general circulation in such district. If no newspaper is published in the county in which such district is located, publication of such advertisement in a newspaper shall be unnecessary, but in such event said notice shall be posted in six conspicuous places in such district, one of which places shall be the main entrance to the school in such district.

15. The extension industrial teacher training courses heretofore established are continued under the jurisdiction and control of the education department. Members of the faculty to teach such courses shall be appointed by the commissioner of education and, subject to the approval of the director of the budget, shall be classified, allocated and paid in accordance with the schedules contained in section three hundred fifty-five-a of this chapter.

17.[1] Whenever a mistake has been made, or an honest dispute exists, as to the location of the division line between land owned by the state, which is under the jurisdiction, care, custody or control of the department of education, and adjoining privately owned land, the commissioner of education, acting for and on behalf and in the name of the people of the state of New York, may enter into a boundary line agreement, fixing and determining the division line between such lands, subject to the approval of the attorney general as to form, content and manner of execution.

18. He shall also have and execute such further powers and duties as he shall be charged with by the regents. As amended L. 1948, c. 22; L. 1950, c. 29; L. 1950, c. 113, §§ 2, 3; L. 1951, c. 533; L. 1952, c. 744, § 2, eff. April 15, 1952.

Section 308 of the New York Education Law

§ 308. Other Powers

The commissioner of education shall also have power and it shall be his duty to cause to be instituted such proceedings or processes as may be necessary to properly enforce and give effect to any provision in this chapter or in any other general or special law pertaining to the school system of the state or any part thereof or to any school district or city. He shall possess the power and authority to likewise enforce any rule or direction of the regents.

Section 309 of the New York Education Law

§ 309. Schools of Union Free School Districts and Cities

The schools of every union free school district and of every city in all their departments shall be subject to the

[1] There is no subdivision 16.

visitation of the commissioner of education. He is charged with the general supervision of their boards of education and their management and conduct of all departments of instruction.

Section 310 of the New York Education Law

§ 310. Appeals or Petitions to Commissioner of Education and Other Proceedings

Any person conceiving himself aggrieved may appeal or petition to the commissioner of education who is hereby authorized and required to examine and decide the same; and the commissioner of education may also institute such proceedings as are authorized under this article and his decision in such appeals, petitions or proceedings shall be final and conclusive, and not subject to question or review in any place or court whatever. Such appeal or petition may be made in consequence of any action:

1. By any school district meeting.

2. By any district superintendent and other officers, in forming or altering, or refusing to form or alter, any school district, or in refusing to apportion any school moneys to any such district or part of a district.

3. By a county treasurer or other distributing agent in refusing to pay any such moneys to any such district.

4. By the trustees of any district in paying or refusing to pay any teacher, or in refusing to admit any scholar gratuitously into any school or on any other matter upon which they may or do officially act.

5. By any trustees of any school library concerning such library, or the books therein, or the use of such books.

6. By any district meeting in relation to the library or any other matter pertaining to the affairs of the district.

7. By any other official act or decision of any officer, school authorities, or meetings concerning any other matter under this chapter, or any other act pertaining to common schools.

Section 311 of the New York Education Law

§ 311. POWERS OF COMMISSIONER UPON APPEALS OR PETITIONS, ET CETERA

The commissioner, in reference to such appeals, petitions or proceedings, shall have power:

1. To regulate the practice therein.

2. To determine whether an appeal shall stay proceedings, and prescribe conditions upon which it shall or shall not so operate.

3. To decline to entertain or to dismiss an appeal, when it shall appear that the appellant has no interest in the matter appealed from, and that the matter is not a matter of public concern, and that the person injuriously affected by the act or decision appealed from is incompetent to appeal.

4. To make all orders, by directing the levying of taxes or otherwise, which may, in his judgment, be proper or necessary to give effect to his decision.

THE BOARD OF REGENTS
THE UNIVERSITY OF THE STATE OF NEW YORK
STATEMENT OF POLICY ON DE FACTO SEGREGATED
PUBLIC SCHOOLS

Adopted January 28, 1960

"After the Supreme Court decision of May 1954, we have all been a part in re-evaluating the role of education in a democracy. It was of greatest significance that the Court in its historic decision stated:

> 'We must consider public education in the light of its full development and its present place in American life throughout the nation . . .
>
> 'Today, education is perhaps the most important function of state and local governments . . . it is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education . . .
>
> ' . . . to separate (them) from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone . . . '

"The State of New York has long held the principle that equal educational opportunity for all children, without regard to differences in economic, national, religious or racial background, is a manifestation of the vitality of our American democratic society and is essential to its continuation. This fundamental educational principle has long since been written into Education Law and policy.

Subsequent events have repeatedly given it moral reaffirmation. Nevertheless, all citizens have the responsibility to reexamine the schools within their local systems in order to determine whether they conform to this standard so clearly seen to be the right of every child.

"Modern psychological knowledge indicates that schools enrolling students largely of homogeneous, ethnic origin, may damage the personality of minority group children. Such schools decrease their motivation and thus impair the ability to learn. Public education in such a setting is socially unrealistic, blocks the attainment of the goals of democratic education, and is wasteful of manpower and talent, whether this situation occurs by law or by fact.

"In seeking to provide effective education for all the children of this State, boards of education are faced with many obstacles in the form of complex social and community problems. Among them is the existence of residential segregation which leads to schools with students predominantly of one race on the elementary and high school levels.

"In spite of these and other difficulties, the Regents are determined to accept this challenge facing our schools today. We charge the Regents Advisory Council on Intercultural Relations in Education, working in close cooperation with the State Education Department, to assist in seeking solutions to the educational aspects of the problem. The Council's recommendation for action, based on systematic and objective study, will be reported to the Regents in due course.

"We recognize that we who have been given the responsibility for the education of the children and youth in our State can deal directly with only these educational aspects. There are larger community problems which influence the quality of education in, and the ethnic composition of our schools. So long as these larger social problems remain unsolved, it will be difficult to solve some of the basic and related educational situations. For this reason,

therefore, we call upon all our citizens and their agencies of government and their civic organizations to take concrete steps to provide the social climate which will make it possible for us to increase the effectiveness of education. Only with this cooperation will we be able to provide that type of democratic education which will enable all children to contribute their understanding, knowledge and skills to increase the greatness of our State and our Nation."

THE UNIVERSITY OF THE STATE OF NEW YORK
THE STATE EDUCATION DEPARTMENT
OFFICE OF THE PRESIDENT OF THE UNIVERSITY
AND COMMISSIONER OF EDUCATION
Albany

June 14, 1963

To: All Chief Local School Administrators and Presidents of Boards of Education

Subject: *Racial Imbalance in Schools*

The State Education Department is constantly seeking to improve policies and practices which will bring about the full operation of the principle of equality of educational opportunity for persons of all social, economic and cultural backgrounds. In line with this effort and after studying the implications of the 1954 decision of the United States Supreme Court, the Board of Regents adopted and announced in January 1961, a Statement of Policy which contained the following paragraph:

> "The State of New York has long held the principle that equal opportunity for all children, without regard to differences in economic, national, religious or racial background, is a manifestation

> of the vitality of our American democratic society and is essential to its continuation. This fundamental educational principle has long since been written into Education Law and policy. Subsequent events have repeatedly given it moral reaffirmation. Nevertheless, all citizens have the responsibility to reexamine the schools within their local systems in order to determine whether they conform to this standard so clearly seen to be the right of every child."

The Regents' statement goes on to point out that modern psychological and sociological knowledge seems to indicate that in schools in which the enrollment is largely from a minority group of homogeneous, ethnic origin, the personality of these minority group children may be damaged. There is a decrease in motivation and thus an impairment of ability to learn. Public education in such a situation is socially unrealistic, blocking the attainment of the goals of democratic education, and wasteful of manpower and talent, whether the situation occurs by law or by fact.

To implement the Regents' Policy, the Department has carried on through its Division of Intercultural Relations, a continuing program of education and assistance aimed toward securing greater understanding and constructive action throughout the schools and colleges of the State. Important progress has been made, especially in higher education.

To assemble additional information on the problem, the Department conducted in November 1961, a racial census of the elementary schools of the State. The findings of that study were reported in July 1962. The report identified a number of districts in which the ratio of Negro to white pupils was relatively high and suggested that these districts should give added attention to this situation.

In June 1962, I appointed a three-member Advisory Committee on Human Relations and Community Tensions to advise and assist the Department and the local school districts. From its studies, the Committee has developed a statement of principles for dealing with racial imbalance in the schools. A copy of this statement is enclosed.

The position of the Department, based on the policy of the Regents, and the principles of the Commissioner's Advisory Committee, is that the racial imbalance existing in a school in which the enrollment is wholly or predominantly Negro interferes with the achievement of equality of educational opportunity and must therefore be eliminated from the schools of New York State.

If this is to be accomplished, there must be corrective action in each community where such imbalance exists. In keeping with the principle of local control, it is the responsibility of the local school authorities in such communities to develop and implement the necessary plans.

It is recognized that in some communities residential patterns and other factors may present serious obstacles to the attainment of racially balanced schools. This does not, however, relieve the school authorities of their responsibility for doing everything within their power, consistent with the principles of sound education, to achieve an equitable balance.

In order that the Department may know what your plans are for carrying out this responsibility, *I request that you submit to me by September 1, 1963, the following information:*

1. A statement indicating the situation in your district with regard to any problem of racial imbalance, regardless of the number of Negro children enrolled, or to the actual existence of or trend toward racial imbalance. At this time and *for the purpose of this report,* a racially imbalanced school is defined as one having 50 per cent or more Negro pupils enrolled.

2. A statement of policy by your board of education with respect to the maintenance of racial balance in your schools.

3. In districts where racial imbalance exists, or is a problem, a report of progress made toward eliminating it.

4. In such districts, your plan for further action, including estimates of the additional cost, if any, and of the time required for carrying out your plan.

In addition to this request for information from your district, I have directed the staff of the State Education Department to reexamine all State laws, rules, regulations, policies and programs pertinent to the issue here under discussion, and to submit to me by the same date any revisions that may be necessary for making them more effective instruments for the elimination of racial imbalance.

These requests for more positive action to eliminate racial imbalance in the schools of New York State are a logical extension of State law and policy, necessary if the principle of equality of educational opportunity is to apply to all, regardless of race, color, creed or economic background. I am aware that many of you have already taken constructive action in this regard and that you will continue to do so. I am confident that working together we shall be able to achieve solutions, which will truly serve the purposes of education in a democracy.

Please let me know how the Department can be of assistance to you in this important effort.

Sincerely,

Commissioner of Education
James E. Allen, Jr.
JAMES E. ALLEN, JR.